

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

LEONARD CARMEN RACKLEY,)	
)	
Petitioner,)	
vs.)	NO. CIV-10-0976-HE
)	
JAMES KEITH, Warden,)	
)	
Respondent.)	

ORDER

Petitioner Leonard Carmen Rackley, a state prisoner represented by counsel, filed this action under 28 U.S.C. § 2254 seeking habeas relief. Consistent with 28 U.S.C. §636(b)(1)(B), the matter was referred for initial proceedings to Magistrate Judge Doyle W. Argo, who recommended that the petition be dismissed upon filing as being untimely. The court remanded the matter for the magistrate judge's consideration of the effect, if any, of Padilla v. Kentucky, ___ U.S. ___, 130 S.Ct. 1473 (2010) on his conclusion that the asserted failure of petitioner's counsel to advise him as to his parole eligibility did not constitute ineffective assistance of counsel.


The magistrate judge has filed a Supplemental Report and Recommendation, concluding that Padilla does not impact his initial determination that the petition was not filed within the applicable one year statute of limitations. Petitioner has objected to the Report and Recommendation, asserting that his petition was filed within the one year statutory period and that he has suffered constitutional violations. He does not discuss Padilla.

The court agrees with the magistrate judge's analysis in his Supplemental Report and Recommendation and also his determination that, even with statutory tolling, the petition was untimely and petitioner has not demonstrated he is entitled to equitable tolling.

Accordingly, the court adopts both the initial and supplemental Report and Recommendation. The petition is dismissed as being untimely.

IT IS SO ORDERED.

Dated this 2nd day of March, 2012.



JOE HEATON
UNITED STATES DISTRICT JUDGE